

Appln. No.: 10/708,692  
Docket No.: 148042 / GS1-0002

### REMARKS / ARGUMENTS

The claims stand restricted as follows:

- I. Claims 2-10 and 23-26, allegedly drawn to an apparatus, classified in class 29, subclass 592.1.

Species 1: Claim 23, allegedly drawn to a fusion without a binder material or a laser weld.

Species 2: Claim 2, allegedly drawn to a fusion that includes a binder material.

Species 3: Claim 7, allegedly drawn to a fusion that includes a laser weld.

- II. Claim 11, allegedly drawn to a process of use of the apparatus, classified in class 29, subclass 830.

In the response to the restriction requirement mailed April 18, 2007, Applicants elected Group I, *with traverse*. Applicants appreciate the Examiner's reconsideration of the Claim Grouping, and withdrawal of the restriction requirement with respect to Claims 2 and 7, thereby incorporating Claims 2 and 7 into Group I as shown above.

Applicants hereby elect alleged Species 1, Claim 23, *with traverse*, respectfully traversing the Election/ Restriction requirement for the following reasons. Applicants submit that Claims 2-10 and 23-26 all read on Species 1.

The Examiner remarks that the alleged species are independent or distinct because the species require *mutually exclusive* materials, are not capable of use together, and are not obvious variations of one another. (Emphasis added). Present paper, page 2.

Applicants respectfully disagree. Applicants submit that the transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004). MPEP §2111.03.

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Claim 23 recites, inter alia: "*An apparatus for attaching a proximity probe, the apparatus comprising: ... a fusion securing said metal interface cup with said metal probe case at an interface between said bottom surface and said second bore*"

To support an allegation that Claim 23 represents an independent or distinct species, the examiner remarks "...claim 23, a fusion without a binder material or a laser weld...". (Emphasis added) Present Paper, page 2.

Applicants respectfully disagree. Applicants submit that that use of the transitional term "comprising" within the preamble of Claim 23 does not exclude use of the fusion having either a binder material or a laser weld. Furthermore, Applicants submit that Claim 23 is absent use of any language to indicate that the fusion claimed by Claim 23 is exclusive of either a binder or a laser weld, as alleged by the Examiner. Accordingly, Applicants respectfully submit that Claim 23 is not drawn to an independent or distinct species as alleged by the Examiner, and respectfully request reconsideration and withdrawal of this restriction.

Claim 2 recites, inter alia, "*The apparatus of claim 23, wherein said fusion includes a binder material.*"

To support an allegation that Claim 2 represents an independent or distinct species, the examiner remarks that "...the species require mutually exclusive materials...". (Emphasis added) Present Paper, page 2.

Applicants respectfully disagree. Applicants submit that that use of the transitional term "including" within Claim 2 does not exclude use of the fusion having a laser weld in combination with the claimed binder material. Furthermore, Applicants submit that Claim 2 is absent use of any language to indicate that the fusion claimed by Claim 2 is exclusive of a laser weld, as alleged by the Examiner. Accordingly, Applicants respectfully submit that Claim 2 is not drawn to an independent or distinct species as alleged by the Examiner, and respectfully request reconsideration and withdrawal of this restriction.

Claim 7 recites, inter alia, "*The apparatus of claim 23, wherein said fusion includes a laser weld*".

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To support an allegation that Claim 7 represents an independent or distinct species, the examiner remarks that "...the species require mutually exclusive materials...". (Emphasis added) Present Paper, page 2.

Applicants respectfully disagree. Applicants submit that that use of the transitional term "including" within Claim 7 does not exclude use of the fusion having a binder material in combination with the claimed laser weld. Furthermore, Applicants submit that Claim 7 is absent use of any language to indicate that the fusion claimed by Claim 7 is exclusive of a binder material, as alleged by the Examiner. Accordingly, Applicants respectfully submit that Claim 7 is not drawn to an independent or distinct species as alleged by the Examiner, and respectfully request reconsideration and withdrawal of this restriction.

For at least these reasons, the Restriction Requirement dated July 27, 2007 is wholeheartedly traversed, and removal of the Requirement, at least with respect to the improper species restrictions noted above, is respectfully requested. As such, Applicants submit that Species 2 and 3 should be combined with Species 1, and respectfully request notice of such. As always, the Examiner is cordially invited to contact the undersigned by telephone to resolve any issues that remain.

Applicants note the Examiner's paragraph 4 in the office action. However, Applicants are aware of no statutory requirement or regulation requiring Applicants to provide reference numerals to the claims of an application for patent in the United States. In view hereof, Applicants' attorneys believe that the application as originally filed fully complies with the statutory requirements of 35 U.S.C. Applicants therefore request withdrawal of the request to provide reference numerals to all the claimed limitations.

In the event the Examiner maintains that the election/restriction requirement is proper, Applicants understand that the scope of search for examination purposes of the elected claims will not include class 29, subclass 830. In the event of reconsideration by the Examiner to include a search of class 29, subclass 830, for examination of the elected claims, Applicants respectfully requests reinstatement of the non-elected claims, as the burden on the Examiner (relating to a search of an additional class/subclass) would have been removed under the Examiner's own initiative.

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**CONCLUSION**

Consideration and allowance of these claims are respectfully requested. The foregoing is believed to be fully responsive to this office action.

The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 06-1130.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above identified Deposit Account.

Respectfully submitted,  
Peter Damion Bellis et al.

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By  \_\_\_\_\_

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